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Legal Department

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Subject:— Opinions on the cases under the Essential Supplies (Temporary Powers) Act, 1946

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EKN.13/7/

Office of the R.L.A.

Government Notification, Civil Supplies Department Nos.605/II dated 17th April 1947 and 31st July 1947 were issued under clause 7 of the Foodgrains Control Order,1942. Under the first notification some non-official members of the District Advisory Committees and Provincial Food and Commodity Advisory Board were authorised for the purposes of clause 7. Under the second notification one Mr.S.M.Shah, member of the Kaira District Price and Supply Advisory Committee was authorised for the purposes of the said clause The proviso to clause 11 of the Foodgrains Control Order, 1947 provides that authorisations made under the Foodgrains Control Order, 1942 which was repealed, shall be deemed to have been made under the corresponding provision of the Foodgrains Control Order, 1947. In clause 7 of the old order, there is only power of entry and inspection whereas under clause 7 of the new order, in addition to the power of entry and inspection, there is power of search and seizure. In view of the provisions in proviso to clause 11 of the new order, the notification in question not being consistent with the provisions of the new order will cease to be in force. However, to remove all doubt the Civil Supplies Department may cancel these notifications.

As regards the other two notifications, they are issued under the Bombay Retail Trade Control and Licensing Order, 1942, in respect of non-official members. There is a provisio in clause 11 of the Bombay Retail Trade Control and Licensing

Order.....

·der, 1947 similar to the proviso in Foodgrains Control Order, 1947 but there is no corresponding provision in the new order under which non-officials can be so authorised. Under clause 8 of the new order the Provincial Government can only authorise officers for the purpose of that clause. These two notifications therefore are not saved by the proviso to clause 11 of the Bombay Retail Trade Control and Licensing Order,,1947.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to C-S.D.No.2931,dated the 28-2-1948.

Submitted for signature.

A.D.C.

A.L.R. Sd/

R.L.A.Sd/

Office of the R.L.A. (G.Branch)

The opinion overleaf having been issued these papers may be filed in file O/ESTP-1948.

An Index-card is put up for persual.

EKN.12/7/

Office of the R.L.A.

It was held by the Sessions Judge, Kaira, in Criminal Appeal No.82 of 1946 that the Govt. order in Civil Supplies Department No.98/II dated 12th February 1944 did not continue in force after the 1st October 1946 on the ground that, as section 3(2) of the Essential Supplies (Temporary Powers) Ordinance,1946 (XVIII of 1946) contained no provision relating to "treatment" it would not be valid to pass orders thereunder regarding "treatment" of any article. Just before the judgment of the Sessions Judge, Kaira, was delivered, Government was considering the question of issuing a direction under condition 4 of the Licence in Form II appended to the Bombay Rice Mills Licensing Order,1943, requiring Mills not to give any polish to rice in the process of milling. Section 3(2) of the Bombay Essential Supplies (Temporary Powers) Act,1946, is in term similar to section 3(2) of the Ordinance No.XVIII of 1946. Consequently, if the decision of the Sessions Judge, Kaira, is held to be correct,condition 4(iii) of the Licence Form II appended to the Bombay Rice Mills Licensing Order would be ultra vires for the same reasons. I have, however, dissented from the view taken by the Sessions Judge, Kaira, and have held in my two opinions No.5893 (slip R) and No.5894 (slip Z) dated the 5th June 1947,given with reference to the aforesaid two Orders that the prohibition against polishing would in those orders be covered by the powers for the regulation of "use" or "consumption" and also by the powers for the regulation of "production" or "manufacture" contained in clauses (d) and

(a).....

(2) of section 3 of the Ordinance. I,therefore, advised an appeal to the High Court againt the Order the Sessions Judge, Kaira, in the one case and the postponement of the issue of the direction in the other case pending the decision of the High Court. The High Court dismissed the appeal but the Government Pleader, High Court, reports that no separate judgement was recorded by the High Court.

2. We do not know whether the reasoning on which I based my opinions was presented to the High Court. In the absence of any judgment, it is difficult also to say whether the High Court intended to uphold the reasoning of the Sessions Judge, Kaira. It is only on the assumption that the High Court intended to do so that any amendment of the Act would be called for. I suggest that we should approach the ~~Hgh~~ High Court again in a typical test case and invite a specific opinion upon the subject. Till then no alteration need be made in the relevant clause of the Bombay Rice Mills Licensing Order, 1943, nor need steps be taken to get the Act amended.

3. It is for the Department to consider whether, in view of the lifting of controls, it would still be necessary from the administrative point of view to retain the probibition against polishing Presumably that prohibition was based on the grounds of conserving stocks and of providing proper nurtition. These grounds still exist even when rationing is discontinued. In that view it may be necessary to continue the prohibition against polishing.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to C.S.D.No.2400,dated the 11th March 1948.

EKN.12/7/

Legal Department.

The F.D. (Supply) in its Order No.98/II dated the 12th February 1944 made under sub-rule (2) of Rule 81 of the Defence of India Rules, directed that no person in the Province of Bombay shall polish by any process involving the use of power-driven machinary rice which is either hand-pounded or processed by the holder of a license under the Bombay Rice Mills Licensing Order, 1943.

2. The relevant provision of the Defence of India Rules under which the above order was made is as follows:-

"81 (2) The Central Government or the Provincial Government so far as it appears to it to be necessary or expedient for securing the defence of British India for efficient prosecution of the war or for maintaining supplies and services essential to the life of the communities, may by order, provide-

(a) for regulating or prohibiting the production treatment, keepint, storage, movement, transfer, distribution, disposal, acquisition, use of consumption of articles or things of any description whatsoever."

As the defence of India Rules were due to expire on 30th September 1946, the Government of India promulgated on Ordinance called the Essential Supplies (Temporary Powers) Ordinance, 1946 (XVIII of 1946) by which the provisions of the said Rule 81 (2) were embodied with alight modifications in section 3 of the Ordinance. The relevant portion runs as follows:-

"(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use of consumption of any essential commodity.

The very same provisions were further embodied in the Central Act No.XXIV of 1946 which repealed the said Ordinance and enacted a new Act in its place.

3. In a prosecution (in Criminal Appeal No.82 of 1946).....

1946) for contravening the Order above referred to, it was held by the Sessions Judge, Surat, that the said Government Order did not continue in force after 1st October 1946, on the ground that as section 3(2) of the Essential Supplies (Temporary Powers) Ordinance 1946 contained no provision relating to 'treatment' it would not be valid to pass orders thereunder regarding 'treatment' of any article.

4. I, however, dissented from the view taken by the Sessions Judge, Surat, for the reasons given in my two opinions No.5893 (Slip R) and No.5894 (Slip Z1) dated 5th June 1947. I have observed in my opinion No.5893 dated 5-6-1947 that both the Ordinance and the Act reserved the power for regulating by licenses permits or otherwise the use or consumption of any essential commodity. 'Use' in this collocation must be given its plenary meaning. Its meaning is "the act of employing a thing for any purpose; its ultilisation or employment for or with some aim or purpose, application or conversion to some end" (New English Dictionary, edited by Murray). In British Motor Syndicate Ltd. Vs. Taylor & Son (1900), 1 G.H.577 at p.583, Sterling J. quoted with approval the meaning assigned to the word 'use' in Johnson's Dictionery, vis." to employ for any purpose"; and added that" it is, therefore, a word of wide signification". The polishing by any process handpounded or processed rice would be the use of such rice within the meaning of clause (d) of section 3(2) of the Ordinance. It, follows, therefore, that although the word 'treatment' which was present in clause (a) of Rule 81(2) under which the Order in question was made, is not now to be found in clauses (a) and (d) of section 3(2) of the Ordinance, its absence does not detract from the powers of regulation for the word 'use'.....

'use' in clause (d) is comprehensive and in its plenary meaning, sufficient to include the polishing of rice by any process." The Sessions Judge, Surat, seems to hold that the order is not operative in so far as it affects rice after it has reached the hands of the ultimate consumer i.e. after the stage of supply has been completed. This reasoning presupposes that the powers of Government, under section 3 of the Ordinance and the corresponding section of the Act do not extend beyond the stage of controlling or regulating supply of essential supplies to consumers. The view is hardly tenable. The powers under section 3 are given for maintaining supplies of an essential commodity and for securing their equitable distribution. It is for that purpose that use or consumption can be regulated for any mis-use or wastage by consumer is bound to affect the maintenance of the supply and its equitable distribution. There is thus no reason, why the power should be restricted to the stage before the article has reached the hands of a consumer." In that opinion I have also pointed out that there is one small difficulty which has not been considered by the Sessions Judge. Clause (d) of section 3(2) speaks of regulating by licenses, permits or otherwise the use or consumption etc. As a general rule, 'otherwise' when following an enumeration should receive ejusdem generis interpretation. The words "or otherwise" in law, when used as a general phrase following an enumeration of particulars are only interpreted in a restricted sense as referring to such other matters as are kindred to the classes before mentioned. In the case of legislation intended to meet emergencies, this general rule may be relaxed by the courts.

6. The question referred to the R.L.A. in the opinion.

opinion No.5894, dated 5th June 1947 (slip Z) was whether a general direction under clause (4) of form II to the Schedule to the Bombay Rice Mills Licensing Order, 1943, prohibiting all licenses to give any degree of polish to rice could be made. With reference to this question I held in that opinion inspite of the Sessions Judge, Surat's judgment that the prohibition against polishing would in this instance be covered by the powers for the regulation of 'use' and also by the powers for the regulation of 'production' or 'manufacture', as the regulation in this case is at a stage where paddy is converted or manufactured into rice and before it reaches the consumer, and I advised Government that the proposed amendment was intra vires of clauses (a) and (d) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946 but that the amendment should not be made pending the decision of the High Court.

6. The High Court has dismissed the appeal against the order of acquittal made by the Sessions Judge, Surat, but beyond a dismissal order, no separate judgment was recorded by the High Court.

7. I do not know whether the reasoning on which I bases my opinion was presented to the High Court. In the absence of any judgment, it is difficult also to say whether the High Court intended to uphold the reasoning of the Session Judge, Surat. With reference to the attitude which the Government should take on the judgment of the High Court, I advised in my opinion No.2400, dated 11-3-1948 that we should approach that High Court again in a typical test case and invite a specific opinion on the subject. Till then no alteration need be made in the relevant clause of Bombay Rice Mills Licensing Order, 1943 nor steps be taken to get the Act amended.

8. On the first issue formulated by the D.C.S. I would say that there is no legal objection to continue the prohibition. Whether it should be continued as a matter of policy, it is for the Department to decide. On the second issue the only solution is to make test case which should otherwise the strong on merits.

A self-contained note is submitted, as desired. The references are all flagged.

Sd/P.M.Lad.
Remembrancer of Legal Affairs.
No.72 dt.17.5.48.

EKM.12/7

Office of the R.L.A.

The Dy.Commissioner of Police has reported that a Guru-ka-lungar function was to take place on 12th April 1948 and the Civil Supplies Department requested him to contact the principal conveners and advise them to apply for a permit as such permits for religious functions where the partakers contributed, were issued. The President and Secretary of the Shri Guru Singh Sabha refused to take a permit though they were assured that such a permit is given in the ordinary course. They were prepared to take a permit only if they were given free rations for the purpose of holding a langar. The function took place at the Khalsa College, Matunga on the 13th and the Police have drawn up a Panchnma and obtained the names of most of the office bearers of the Sabha. The Secretary, Home Department, is in favour of launching a prosecution but in view of the High Court decision refusing to admit an appeal against acquittal in a similar case, he considers that a reference to the Remembrancer of Legal Affairs regarding successful prosecution seems desirable, Honourable Minister (Civil Supplies) has directed the Remembrancer of Legal Affairs to look into the matter, and give hi opinion.

2. The question has been exhaustively discussed by the Remembrancer of Legal Affairs (Mr.Moos) in his opinion No.9494 dated 18th December 1945 and note dated 7th January 1946 and in my opinion No.5238 dated 22nd May 1947 and as a result the policy of granting permits in such cases was adopted. Since, however, the conveners of the 'langar', though assured of the grant of a permit in the ordinary course provided they applied for such permit, adopted an intransigent attitude and refused to apply for permit, the only course left open now is to make a test case and try our chances of securing a conviction.

Sd/P.M.Lad.
Remembrancer of Legal Affairs.

EKN.12/7/ U.O.N. to S.W.No.222 Confl dated 11.5.1948.

Office of the R.L.A.

The offence of selling or causing to be sold Steam Coal, Hard Coke and Steam Coal Dust at a price higher than that specified in the Schedule to the Sholapur District Steam Coal and Hard Coke Price Control Order,1948 is punishable under Section 7 of the Essential Supplies (Temporary Powers) Act as the said Order is made under Section 3 of the said Act. Section 8 of the Essential Sppplies (Temporary Powers)Act,1946 provides that any person who attempts to contravene any order made under Section 3 shall be deemed to have contravened that Order. Any attempt to sell steam Coal etc. above the controlled rate is therefore a contravention of the sholapur Steam Coal and Hard Coke Price Control Order, 1948 and it is not necessary to make a specific provision in respect thereof in the said Order. The presumption made by the Director Civil Supplies at page 65 is correct.

Sd/P.M. Lad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.O.No.6077,dated 30-6-48.

EKN.12/7/

Office of the R.L.A.

It appears from the panchnama that 22 persons including the two cooks were partaking of the food prepared in the Dharmashala. Besides these persons there were three servers. It is stated that the balance of food in the kitchen was sufficient for about 10 persons. It is not however made clear in the panchanma at what stage of the dinner the raid was effected. There is also no evidence to show that the three servers were also to partake of the food. Under these circumstances it would appear that the number of persons in this case is on the border line of the prescribed limit and it would be difficult to prove that the food--taking into consideration the entire quantity--was necessarily prepared for consumption by 25 or more persons.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to C.S.D.No.H1633,dated the 22nd October 1948.

EMN.12/7/

Office of the R.L.A.

Government Notification, C.S.D.No.390/F.A.C./VI,dated 22nd June 1948 inter alia provides that no caterer at the instance or for the benefit of himself or any person shall on any one day in Greater Bombay either himself or through an agent prepare or cause to be prepared food for consumption by twenty five or more persons at or in connection with one or more of his own or such person's parties, entertainments or functions. The prohibtion is against the caterer preparing food for more than 24 persons for one or more parties of the same host on the same day. There does not seem to be any objection to his preparing food for 150-200 persons at a time at one place provided that in respect of each of his clients he does not prepare food for more than 24 persons. The caterer should however guard against the possibility of two or more of his clients acting in concert but placing separate orders.

The applicant is a licensed caterer and under clause 6 of the Bombay Catering Establishment Function Licensing and Information Order, 1945 it is obligatory on him to give 7 days written notice to the Controller of Rationing, Bombay, if the provides establies outside his establishment to more than 20 persons in connection with a party, function etc. The details in such notice (cf.Clause 7(1)(A) of the Said Order) will keep Government informed about the number ofpersons served by each host and would be a good check on the caterer who tries to contravene the 24 order.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No.G/686,dated 30/XI/48.

EKN.12/6/

Office of the R.L.A.

The following two questions are raised for consideration:-

(i) whether offences under the Bombay Rationing Order and the City of Bombay Rationing Regulation 1943 and the Bombay Suburban District Rationing Regulation, 1943 are cognizable i.e., whether offences under the Essential supplies (Temporary Powers) Act, 1946 and Bombay Essential Commodities and Cattle (Control) Act,1946 are cognizable or non-cognizable.~~xxxx~~ and

(ii). whether Police Authorities in the Bombay Province and other Provinces can investigate into such offences without an order from the Magistrate irrespective of the fact that these offences are cognizable or noncognisable.

Question No.1.

The offences under the Bombay Rationing Order, 1943,the City of Bombay Rationing Regulation, 1943,and the Bombay Suburban District Rationing Reglation, 1943,are now punishable under section 7 of the Essential Supplies (Temporary Powers) Act, 1946 under which such offences are punishable with imprisonment for 3 years. Under the Bombay Essential Commodities and Cattle (Control)(Enhancement of Penalties) Act,1947 this limit of maximum punishment is raised to seven years. Under section 4(1) if of the Criminal Procedure Code read with Schedule II of the Said Code, these offences are cognizable. The position of offences punishable under Bombay Essential Commodities and Cattle (Control)Act, is also similar.

Question No.2.

Under section 155 (2)~~x~~ of the Criminal Procedure Code no Police officer can investigate a non-cognizable offence without the order of a competent

Magistrate.....

Magistrate. Under section 156 Criminal Procedure Code, a Police Officer may ~~xx~~ investigate a cognizable offence without the order of a Magistrate. The Police can investigate offences under the Essential Supplies (Temporary Powers) Act and Bombay Essential Commodities and Cattle (Control) Act without an order from a Magistrate as they are cognizable offences.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D./V.No.G/715, dated 21-12-48.

EKN.12/7/

Office of the R.L.A.

Section 5(2) of the Criminal Procedure Code provides that all offences ~~xxx~~ under any other law (i.e. law excluding the Indian Penal Code)shall be investigated inquired into, tried and otherwise dealt with according to the provisions contained in the said Code but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The ~~xxxxxx~~ provisions of the criminal Procedure Code are therefore applicable to the investigation, inquiry and trial of offences punishable under the Essential Supplies (Temporary Powers) ~~xxxxxxxxxx~~ Act,1946 or the Bombay Essential Commodities and Cattle (Control)Act,1946 except in respect of matters which are specifically provided for in the said Acts. Offences under the Essential Supplies (Temporary Powers)Act, and the Bombay Essential Commodities and Cattle (Control)Act are punishable with imprisonment for 3 years, but under the Bombay Essentia. commodities and Cattele (Control) (Enhancement of Penalties)Act,1947 this limit of maximum imprisonment is raised to 7 years. These offences are therefore cognizable and non-bailable. (Please see Shhedule II of the Criminal Procedure Code read with Sections 4(1) (b) and 4(1) (f) of the said Code)-

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.O.R. to C.S.D./Estt.No.,G1720,dated 24/12/48.

EKN. 12/7/